IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 34 OF 2006

IN

APPEAL NO. 797 OF 2006

IN

NOTICE OF MOTION NO. 3288 OF 2006

IN

SUIT NO. 2000 OF 2006

Rizvi Land Developments Pvt. Ltd., .. Petitioners.

vs.

Housing Development & Improvement

India Pvt. Ltd., .. Respondents.

Mr. Akthar Hasan Rizvi, Managing Director of

Petitioner in person.

Mr. T.N. Subramaniam, Sr. Adv. with R.C. Shah

i/by J.B Patel for Respondents.

Adv. Y.K. Tiwari - present on show cause notice.

Coram: J.N. PATEL &,

J.H. BHATIA, JJ.

Date: 18TH JUNE, 2007.

P.C.

. Heard the petitioner who is appearing in person

in his capacity as the managing director of the petitioners. As directed by this Court Mr. Y.K. Tiwari, the learned advocate who appeared before the learned trial Court has filed his affidavit. The same is taken on record. Copy of the same is furnished to the other side. The learned counsel appearing for the respondents-original defendants submits that he has two preliminary objections in the matter. The first is that a person cannot appear for a company till he discharges his advocate and even otherwise he cannot represent a corporate body without engaging an advocate. The second preliminary issue raised before us is that the review petition is not maintainable.

2. On the first issue we are of the view that nothing has been placed before us to show that the managing director of the petitioner company cannot appear in person in a review petition filed by the company, particularly when he has made specific grievances against his advocates and he chooses to prefer the review petition without engaging an advocate in the matter. In so far as the second contention is concerned, we find that technically the learned counsel for the respondents is right in so far as the scope of the review petition is concerned, but, we find that the Bench has made certain observation against the advocates for the petitioners who have filed affidavits in the appeal which was not only uncalled for but the observation has been made without giving an opportunity

to the advocates who have filed their affidavits. The observation made by the Court is disparaging in nature and it directly reflects upon the character of the advocates who have been attributed to be 'dishonest' by merely perusal of the affidavits filed by them.

3. One of us (Bhatia, J.) was party to the order of which review is sought and we are of the view that the observation made by the Bench while disposing of the appeal in respect of the character of the advocates who have filed their affidavits deserves to be recalled and the parties can move the trial Court for expeditious hearing of the notice of motion pending before it for restoration of the suit.

4. In so far as the ad-interim order of status quo is concerned, it is submitted by the petitioner in person that till the impugned order came to be passed, an order of status quo was in operation as granted by the trial Court by its order dated 17.8.2006 i.e. till the suit came to be withdrawn which is sought to be restored in the notice of motion. The appeal was preferred in this Court as in the notice of motion No. 3288 of 2006 there was a prayer for grant of interim relief so as to maintain status quo prevailing on the date the suit was alleged to be withdrawn and as the learned trial Court rejected the said prayer.

5. In our view, it will be proper in the given

facts and circumstances, not to make any observation on this issue and we leave it to the learned trial Court to take appropriate decision in respect of the prayers in the notice of motion no. 3288 of 2006 for restoration of the suit which may entail revival of the order of status quo.

6. The observation made in para 2 in the order dated 10.11.2006 "This statement in the Affidavits does not inspire confidence and appears to us to be not honest." stands expunged and be read accordingly.

7. In so far as the ad-interim order of status quo passed by this Court is concerned, the same does not survive.

8. We further make it clear that the learned trial Court would not be influenced by any of the observations made by the bench in its order dated 10.11.2006 while disposing of the appeal for seeking interim relief in notice of motion for restoration of the suit which came to be rejected.

9. The review petition stands disposed of accordingly. No order as to costs.

10. The affidavit in reply to the show cause notice issued to the concerned advocate is taken on record. The show cause notice is dropped.

(J.N. Patel, J.)

(J.H. Bhatia, J.)